

**IOWA DEPARTMENT OF NATURAL RESOURCES  
ADMINISTRATIVE CONSENT ORDER**

IN THE MATTER OF:  <b>DAIRY VENTURE LLC</b> <b>Facility #63902</b>  <b>Linn County, Iowa</b>	<b>ADMINISTRATIVE CONSENT ORDER</b> <b>NO. 2014-AFO-10</b>
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TO: Ralph Staal  
Dairy Venture LLC  
1350 Waubeek Road  
Central City, Iowa 52214

**I. SUMMARY**

This administrative consent order is entered into between the Iowa Department of Natural Resources (DNR) and Dairy Venture LLC (Dairy Venture) for the purpose of resolving violations resulting from a manure discharge that resulted in water quality violations and a fish kill. In the interest of avoiding litigation, the parties have agreed to the provisions below.

Questions regarding this administrative consent order should be directed to:

**Relating to technical requirements:**

Brian Jergenson, Field Office 1  
Iowa Department of Natural Resources  
909 West Main, Suite 4  
Manchester, Iowa 52057  
Phone: 563/927-2640

**Relating to legal requirements:**

Kelli Book, Attorney for the DNR  
Iowa Department of Natural Resources  
7900 Hickman Road, Suite 1  
Windsor Heights, Iowa 50324  
Phone: 515/725-9572

**Payment of penalty to:**

Director of the Iowa DNR  
Wallace State Office Building  
502 East Ninth Street  
Des Moines, Iowa 50319-0034

**II. JURISDICTION**

This administrative consent order is issued pursuant to the provisions of Iowa Code section 455B.175(1), which authorizes the Director to issue any order necessary to secure compliance with or prevent a violation of Iowa Code chapter 455B, Division III, Part 1; Iowa Code chapter 459 and the rules adopted or permits issued pursuant thereto; and Iowa Code section 455B.109 and 567 Iowa Administrative Code (IAC)

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chapter 10, which authorize the Director to assess administrative penalties. Iowa Code section 481A.151 authorizes the assessment and recovery of damages to natural resources.

**III. STATEMENT OF FACTS**

1. Dairy Venture owns and operates a dairy confinement feeding operation located at 1350 Waubeek Road, Central City, Iowa (NE ¼ of NW ¼ of Section 24, Maine Township, Linn County). The facility houses 650 head of dairy cows in the confinement building (910 animal units). The manure from the facility travels from the reception pits to a sand lane and the sand lane discharges manure to another reception pit. Some of the liquid is then pumped back to the reception pits for flushing, while the remainder of the manure is transferred to an earthen basin.

2. On December 3, 2013, Ralph Staal, a representative of Dairy Venture contacted DNR Field Office 1 to report that manure from Dairy Venture entered an unnamed tributary to the Wapsipinicon River due to a release from the manure handling system at the facility. Mr. Staal estimated the release had occurred for up to an hour at 1,500 gallons per minute before it was discovered and the pump was shut down. DNR Field Office 1 advised Mr. Staal to take immediate action to stop the flow of manure from entering the unnamed tributary.

3. On December 3, 2014, Brett Meyers and Brian Jergenson, DNR Field Office 1 environmental specialists, visited the facility and met with Mr. Staal. Mr. Staal explained that the manure went over an earthen basin adjacent to the facility's sand lane. The manure traveled northeast to the south ditch of Waubeek Road. From the south ditch the manure crossed under the road through a culvert to the north road ditch. The manure flow continued east and entered the unnamed tributary approximately ½ mile east of the facility. The field office personnel proceeded to the unnamed tributary. They observed that an earthen dike had been constructed to prevent additional manure from entering the tributary. The field sample taken directly below the earthen dike indicated an ammonia level greater than 3 parts per million (ppm). The field office personnel observed manure solids, water, and sand in the ditch above the dike and noted that manure had entered the tributary prior to the dike being constructed. The field office personnel took a field sample 20 feet downstream of the earthen dike which indicated an ammonia level less than 3 ppm.

4. Mr. Jergenson and Mr. Meyers traveled ½ mile north (downstream) to the location where the tributary crossed Leona Lane through a large culvert. On the upstream side of the Leona Lane culvert an earthen dam had been created to prevent impacted water from traveling further down the tributary. Mr. Staal stated he planned to pump and land apply the water from above the dam throughout the night to catch the slug of manure laden water that was likely present in the ½ mile between the Waubeek Road and Leona Lane. The field sampling upstream and

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downstream of the dam indicated an ammonia level less than 3 ppm. Prior to leaving the site for the evening, the field office personnel spoke with Mr. Staal. They explained that the manure slug of impacted water was likely between the two points and agreed with Mr. Staal's plan to pump the tributary throughout the night.

5. On December 4, 2013, Chris Gelner, DNR Field Office 1 environmental specialist, returned with Mr. Jergenson to the site. The facility was still pumping manure-laden water from above the dam at Leona Lane. The field office personnel observed dead fish downstream of the earthen dike in the Waubeek Road ditch. The field office personnel observed a 4 inch clay tile discharging manure-laden water to the unnamed tributary. The inlet to the surface tile was discovered in the Waubeek Road ditch upstream of the earthen dike. It appeared that as the manure-laden water was building up behind the dike in the ditch that the unmarked tile line had become the main transport mechanism to the tributary. Dead fish were observed both above and below the tile line discharge point, but not above the original location where manure entered the tributary.

6. The field office personnel showed Mr. Staal the dead fish as well as the tile line discharging manure. They recommended that Mr. Staal take action to immediately stop the discharge. The field office personnel notified Paul Sleeper, DNR Fisheries Biologist, of the fish kill.

7. Mr. Gelner collected a sample of the water from the tile outlet at its discharge point to the unnamed tributary. The ammonia concentration was 730 mg/L. The field office personnel observed dead fish at this location. Mr. Gelner collected another sample of the water approximately 20 feet downstream of the tile outlet. The ammonia concentration was 7.8 mg/l. The field office personnel observed dead fish at this location. Mr. Gelner collected a water sample just upstream of the Waubeek Road ditch; this area represented water from above any known entry points of the manure spill. The ammonia concentration was .21 mg/L. The field office personnel observed live fish at this location; no dead fish were observed.

8. Mr. Sleeper and his staff arrived to begin the fish kill count. The field office personnel assisted the Fisheries personnel in determining the fish kill area. The field office personnel proceeded downstream of the Leona Lane dam at Bridgeout Road. The field test indicated an ammonia concentration greater than 3 ppm. Access to flowing water was not available downstream of this location due to ice followed by dry creek bed conditions.

9. The field office personnel returned to the Leona Lane culvert and conducted field tests above and below the dam, both indicating ammonia concentrations greater than 3 ppm. The field office personnel contacted the Dairy Venture personnel and informed them that the dam appeared to be allowing ammonia-laden water downstream. The facility personnel stated the dam would be

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reinforced. The tile line had been temporarily plugged. The field office personnel reminded the facility personnel of the importance of stopping the discharge immediately.

10. On December 23, 2013, DNR issued a Notice of Violation letter for the water quality violations discovered during the December 2013 investigation. The field office investigative costs equaled \$873.32.

11. On January 20, 2014, Mr. Staal submitted a response to the Notice of Violation letter with an explanation of the cause of the discharge. Mr. Staal also submitted a plan of action to ensure that a discharge would not happen again. The facility intends to prevent dead ends in the sand lane to ensure that sand will not pile up. The facility will pile the majority of the sand at the top of the sand lane rather than at the lower end. The facility also will increase the monitoring of the sand lane. In the spring, the facility will reseed the impacted area of the road ditch. The DNR has concluded that the failure to maintain the sand lane was the cause of the most recent discharge and that the plan submitted by Mr. Staal to improve the maintenance and monitoring of the sand lane will ensure that this release will not occur again.

12. Paul Sleeper, with the DNR Fisheries Bureau, conducted the fish kill investigation in the 1.5 miles of the impacted stream. It was estimated that 1,226 fish were killed with a value of \$140.16. The Fisheries investigative costs equaled \$281.10. The total restitution and investigative costs equaled \$421.26. On February 10, 2014, DNR received the restitution and the Fisheries Bureau's investigative costs payment from Dairy Venture.

#### IV. CONCLUSIONS OF LAW

1. Iowa Code section 459.103 provides that the Environmental Protection Commission (Commission) shall adopt rules related to the construction or operation of animal feeding operations, including permit and minimum manure control requirements. The Commission has adopted such rules at 567 IAC chapter 65.

2. 567 IAC 65.2(3) states that the minimum level of manure control for a confinement feeding operation shall be the retention of all manure produced in the confinement enclosures between periods of manure application. In no case shall manure from a confinement feeding operation be discharged directly into a water of the state or into a tile line that discharges to a water of the state. DNR Field Office 1 observed that manure from Dairy Venture was released into an unnamed tributary of the Wapsipinicon River. The above mentioned facts indicate a violation of this provision.

3. 567 IAC 61.3(2) provides general water quality criteria and prohibits discharges that will produce objectionable color, odor or other aesthetically

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objectionable conditions; settle to form sludge deposits; interfere with livestock watering; or are toxic to animal or plant life. The manure discharge resulted in a fish kill and the laboratory results indicated elevated levels of ammonia. The water was discolored and manure and sand were observed in the water. The above mentioned facts indicate violations of the general water quality criteria.

4. Iowa Code section 455B.186 and 567 IAC 62.1(1) state that a pollutant shall not be disposed of by dumping, depositing, or discharging such pollutant into any water of the state except that this section shall not be construed to prohibit the discharge of adequately treated sewage, industrial waste, or other waste pursuant to a permit issued by the Director. DNR Field Office 1 observed that manure from Dairy Venture was released into an unnamed tributary of the Wapsipinicon River. The above mentioned facts indicate a violation of these provisions.

5. Iowa Code section 481A.151 provides that a person who is liable for polluting a water of this state in violation of state law shall also be liable to pay restitution to the DNR for injury caused to a wild animal by the pollution. The DNR has adopted 571 IAC chapter 113. 571 IAC chapter 113 provides that a person who is liable for polluting a water of this state in violation of state law shall also be liable to pay restitution to the DNR for injury caused to a wild animal by the pollution. A fish kill resulted from the manure discharge from Dairy Venture.

**V. ORDER**

THEREFORE, the DNR orders and Dairy Venture agrees to do the following:

1. Dairy Venture shall pay the field office investigative costs of \$873.32 within 30 days of the date the Director signs this administrative consent order; and
2. Dairy Venture shall pay an administrative penalty in the amount of \$3,000.00 within 30 days of the date the Director signs this administrative consent order.

**VI. PENALTY**

1. Iowa Code section 455B.191 authorizes the assessment of civil penalties of up to \$5,000.00 per day of violation for each of the water quality violations involved in this matter.

2. Iowa Code section 455B.109 authorizes the Commission to establish by rule a schedule of civil penalties up to \$10,000.00, which may be assessed administratively. The Commission has adopted this schedule with procedures and criteria for assessment of penalties in 567 IAC chapter 10. Pursuant to this chapter, the DNR has determined that the most effective and efficient means of addressing

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the above-cited violations is the issuance of an administrative consent order with an administrative penalty of \$3,000.00. The administrative penalty is determined as follows:

Economic Benefit – 567 IAC chapter 10 requires that the DNR consider the costs saved or likely to be saved by noncompliance. 567 IAC 10.2(1) states that “where the violator received an economic benefit through the violation or by not taking timely compliance or corrective measures, the department shall take enforcement action which includes penalties which at least offset the economic benefit.” 567 IAC 10.2(1) further states, “reasonable estimates of economic benefit should be made where clear data are not available.” The manure released from the facility had significant value as a crop fertilizer. Therefore, there were no costs avoided in this matter. However, the failure to properly maintain the manure handling structure saved labor hours and equipment costs. It is estimated that cleaning the sand lane would have taken approximately five hours. The estimated costs delayed is therefore \$100.00 (\$15.00 per hour x 5 hours = \$75.00 + \$25.00 in operating costs of the skid loader). Based on the above-mentioned facts, \$100.00 is assessed for this factor.

Gravity – One of the factors to be considered in determining the gravity of a violation is the amount of penalty authorized by the Iowa Code for that type of violation. As indicated above, substantial civil penalties are authorized by statute. Despite the high penalties authorized, the DNR has decided to handle the violations administratively at this time, as the most equitable and efficient means of resolving the matter. Improper discharges of manure to waters of the state contribute to contaminants in both land and water resources of the state. DNR Field Office 1 documented a manure discharge that led to documented water quality violations and a fish kill. These violations threaten the integrity of the regulatory program because compliance with animal feeding operation requirements is required of all persons in this state. Therefore, \$2,500.00 is assessed for this factor.

Culpability – Dairy Venture has a duty to remain knowledgeable of DNR’s requirements and to be alert to the probability that its conduct is subject to DNR’s rules. It is the facility’s responsibility to ensure that the facility is properly operated and managed, including the handling of manure. However, the facility notified the DNR of the manure release and took immediate steps to stop the discharge. Therefore, \$400.00 is assessed for this factor.

## VII. WAIVER OF APPEAL RIGHTS

This administrative consent order is entered into knowingly and with the consent of Dairy Venture. For that reason Dairy Venture waives the right to appeal this administrative consent order or any part thereof.

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**VIII. NONCOMPLIANCE**

Compliance with Section V of this administrative consent order constitutes full satisfaction of all requirements pertaining to the violations described in this administrative consent order. Failure to comply with this administrative consent order may result in the imposition of administrative penalties pursuant to an administrative order or referral to the Attorney General to obtain injunctive relief and civil penalties pursuant to Iowa Code section 455B.191.

Chuck Gipp  
CHUCK GIPP, DIRECTOR  
Iowa Department of Natural Resources

Dated this 18<sup>th</sup> day of  
April, 2014.

Rep. [Signature]  
DAIRY VENTURE LLC

Dated this 9<sup>th</sup> day of  
April, 2014.

Facility #63902; Kelli Book; DNR Field Office 3, EPA, VIII.D.1.a, VIII.D.3.a

